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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,814

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Hideki Ishihara

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EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

04/28/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/523,814	Applicant(s) ISHIHARA ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-10 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 and 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/06/09; 1/22/10</u> . | 6) <input type="checkbox"/> Other: _____ |

1. This action is responsive to the amendment filed on January 22, 2010.
2. Claims 2-10 are pending. Claim 1 is cancelled. Claims 3-5 are withdrawn from further consideration as being drawn to a nonelected invention. Claims 2, 6, 10 are currently amended.
3. The objection to claims 6 and 10 is withdrawn in view of Applicants' amendment.
4. The rejection of claims 2, 6-10 under 35 U.S.C. 103(a) as being unpatentable over Trinh et al. (US Patent No. 5,849,310) is withdrawn in view of Applicants' amendment.
5. The rejection of claims 2, 6-10 under 35 U.S.C. 103(a) as being unpatentable over Ishida et al. (US 2003/0216283) in view of Trinh is withdrawn in view of Applicants' submission of a translation of their foreign priority document.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherry et al. (US Patent No. 6,716,805), hereinafter "Sherry".

Sherry teaches a liquid, hard surface cleaning composition in the form of a ready-to-use solution which comprises from about 0.005% up to about 0.5% by weight of hydrophilic polymer; optionally, but preferably from about 0.005% to about 0.5% of a primary detergent surfactant preferably comprising alkyl polysaccharide detergent surfactant; optionally, a minor amount that is less than the amount of primary detergent surfactant, preferably from about 0.0005% to about 0.5% by weight of cosurfactant like anionic surfactant (which reads on component I); optionally, an effective amount of perfume to provide odor effects; and additional adjuvants; and an aqueous solvent system comprising water (which reads on component V); and wherein said solution has a pH under usage conditions from about 2 to about 12 (see abstract; col. 3, line 28 to col. 5, line 2). For purposes of soap scum and hard water stain removal, the composition can be made acidic with a pH of from about 2 to about 5 through the use of one or more organic acids like glycolic, citric acid or tartaric acid, among a few (see col. 13, lines 50-67) which are α -hydroxy carboxylic acids (which read on component III). The amount of organic acid can be from about 0.01% to about 1% by weight of the composition (see col. 14, lines 12-16). The aqueous solvent system can also comprise, in addition to water, can also comprise highly volatile solvents in an amount from about 0.25% to about 5% by weight like methanol and other solvents like paraffins and isoparaffins (see col. 17, lines 11-39), which paraffins read on component (II), i.e., oil. Most hard surface cleaner products contain some perfume to provide an olfactory

aesthetic benefit and to cover any “chemical” odor that the product may have (see col. 18, lines 30-32). A mixture of perfume ingredients is usually used (see col. 18, lines 25-26). Perfume components include hydrocarbons (read on component C), benzyl benzoate, amyl salicylate (both read on component B(i)), tricyclodecenyl acetate (reads on component B(ii)), tricyclodecenyl propionate (reads on component B(i)), 2-n-heptylcyclopentanone or 3-methyl-2-pentylcyclopentanone (reads on component B(iv)), musks (read on component (A), which are typically present in an the range from 0.1% to 2% by weight of the total composition (see col. 18, lines 49 to col. 19, line 19). The composition also contain buffers like glycolic acid, citric acid or tartaric acid in an amount from about 0.001% to about 0.05% by weight of the composition (see col. 20, lines 11-52), which buffers likewise read on component III). Sherry, however, fails to specifically disclose a hair cosmetic composition, which masks the acidic odor of the hair composition., comprising a fragrance composition which comprises at least one musk, hydrocarbons, benzyl benzoate, amyl salicylate, tricyclodecenyl acetate, tricyclodecenyl propionate, 2-n-heptylcyclopentanone, 3-methyl-2-pentylcyclopentanone.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a composition comprising a fragrance which comprises at least one musk, hydrocarbons, benzyl benzoate, amyl salicylate, tricyclodecenyl acetate, tricyclodecenyl propionate, 2-n-heptylcyclopentanone, 3-methyl-2-pentylcyclopentanone because Sherry specifically desires mixtures of perfume ingredients and these are some of the suitable selection of perfume ingredients which

provides an olfactory aesthetic benefit and covers any "chemical" odor that the product may have, as disclosed in col. 18, lines 30+.

Even though Sherry does not teach a hair cosmetic use of his composition, which masks the acidic odor of the hair composition., rather a hard surface cleaning use, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sherry as applied to the above claims, and further in view of Nakatsu et al. (US Patent No. 5,965,518), hereinafter "Nakatsu".

Sherry teaches the features as described above. Sherry, however, fails to specifically disclose sulfur-containing compounds in the perfume composition.

It is known from Nakatsu, an analogous art (see claim 18), to add sulfur-containing compounds in perfume compositions to impart antimicrobial activity to the perfume composition (see abstract; col. 3, lines 29-32).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate sulfur-containing compounds into the perfume compositions of Sherry because this would impart antimicrobial activity to the perfume compositions as taught by Nakatsu.

9. In the alternative, claims 2, 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherry in view of Nakatsu.

Sherry teaches the features as described above. Sherry, however, fails to specifically disclose a hair cosmetic composition comprising a fragrance composition which comprises at least one musk, hydrocarbons like limonene, amyl salicylate, tricyclodecenyl acetate, tricyclodecenyl propionate, 2-n-heptylcyclopentanone, 3-methyl-2-pentylcyclopentanone and sulfur-containing compounds in the perfume composition.

It is known from Nakatsu, an analogous art (see claim 18), to add sulfur-containing compounds in perfume compositions to impart antimicrobial activity to the perfume composition (see abstract; col. 3, lines 29-32). In addition, Nakatsu teaches fragrance compositions comprising hydrocarbons like limonene (see col. 3, line 42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a composition comprising a fragrance which comprises at least one musk, hydrocarbons, benzyl benzoate, amyl salicylate, tricyclodecenyl acetate, tricyclodecenyl propionate, 2-n-heptylcyclopentanone, 3-methyl-2-pentylcyclopentanone because Sherry specifically desires mixtures of perfume ingredients and these are some of the suitable selection of perfume ingredients which provides an olfactory aesthetic benefit and covers any "chemical" odor that the product may have as disclosed in col. 18, lines 30+, and to have chosen terpene as the specific hydrocarbon because this is a known hydrocarbon for similar use as taught by Nakatsu.

It would also have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate sulfur-containing compounds into the perfume

compositions of Sherry because this would impart antimicrobial activity to the perfume compositions as taught by Nakatsu.

Even though Sherry and Nakatsu do not teach a hair cosmetic use of his composition, which masks the acidic odor of the hair composition, rather a hard surface cleaning use, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393.

10. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behan et al. (US Patent No. 5,334,581), hereinafter "Behan" in view of Maksimoski et al. (US Patent No. 4,983,383), hereinafter "Maksimoski".

Behan teaches personal products (see abstract) like hair conditioners which generally comprise: 0.5-10% by weight of fatty materials/gloss agents, e.g. mineral oil, silicones (which read on component (II)); 0.5-3% of emulsifier, e.g. sodium lauryl ether sulphate (which reads on component (I)); 0-2% of cationic conditioning agents, e.g. quaternary ammonium salts; 0-5% of polyols, e.g. propylene glycol; 0-1.5% of additional adjuncts such as anti-oxidants, preservatives and dyes; 0.05-1% of perfume; 78.5-98% of water (component V) (see col. 8, lines 40-49). Other ingredients include citric acid in an amount of 0.20 wt% (see col. 12, line 27) which reads on component (III). A mixture of perfume ingredients is usually used (see col. 18, lines 25-26). The perfume is added in the form of a structured emulsion (see abstract). Perfume components and mixtures thereof which can be used include hydrocarbons (read on component C), benzyl

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benzoate, amyl salicylate (both read on component B(i)), tricyclodecenyl acetate (reads on component B(ii)), tricyclodecenyl propionate (reads on component B(i)), 2-n-heptylcyclopentanone or 3-methyl-2-pentylcyclopentanone (reads on component B(iv)), musks (read on component (A) (see col. 6, lines 8-46), which should mask the acidic odor of the hair composition. Behan, however, fails to specifically disclose a hair conditioner comprising a fragrance composition which comprises at least one musk, hydrocarbons, benzyl benzoate, amyl salicylate, tricyclodecenyl acetate, tricyclodecenyl propionate, 2-n-heptylcyclopentanone, 3-methyl-2-pentylcyclopentanone, and the pH of the composition.

It is known from Maksimoski, an analogous art, that a hair care composition which provides hair conditioning properties (see abstract) has a pH in the range from about 3 to about 7 (see col. 16, lines 67-68; claim 7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a hair conditioning composition comprising a fragrance which comprises at least one musk, hydrocarbons, benzyl benzoate, amyl salicylate, tricyclodecenyl acetate, tricyclodecenyl propionate, 2-n-heptylcyclopentanone, 3-methyl-2-pentylcyclopentanone because Dehan specifically desires mixtures of perfume ingredients and these are some of the suitable selection of perfume ingredients which impart a desired odour to the personal product in the package and/or in use and/or hair after use, as disclosed in col. 6, lines 1-6, and to have prepared the hair conditioning composition at a pH within those recited because it is known from

Maksimowski that a hair conditioning composition can be prepared with an acidic pH as those recited.

11. In the alternative, claims 2, 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behan and Maksimoski in view of Nakatsu.

Behan and Maksimoski teach the features as described above. Behan and Maksimoski, however, fail to specifically disclose a hair conditioner comprising a fragrance composition which comprises at least one musk, hydrocarbons like limonene, amyl salicylate, tricyclodecenyl acetate, tricyclodecenyl propionate, 2-n-heptylcyclopentanone, 3-methyl-2-pentylcyclopentanone and sulfur-containing compounds in the perfume composition.

It is known from Nakatsu, an analogous art (see claim 18), to add sulfur-containing compounds in perfume compositions to impart antimicrobial activity to the perfume composition (see abstract; col. 3, lines 29-32). In addition, Nakatsu teaches fragrance compositions comprising hydrocarbons like limonene (see col. 3, line 42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a composition comprising a fragrance which comprises at least one musk, hydrocarbons, benzyl benzoate, amyl salicylate, tricyclodecenyl acetate, tricyclodecenyl propionate, 2-n-heptylcyclopentanone, 3-methyl-2-pentylcyclopentanone because Behan specifically desires mixtures of perfume ingredients and these are some of the suitable selection of perfume ingredients which impart a desired odour to the personal product in the package and/or in use and/or hair

after use, as disclosed in col. 6, lines 1-6); and to have chosen terpene as the specific hydrocarbon because this is a known hydrocarbon for similar use as taught by Nakatsu.

It would also have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate sulfur-containing compounds into the perfume compositions of Behan and Maksimoski because this would impart antimicrobial activity to the perfume compositions as taught by Nakatsu.

12. Claims 6, 7, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keys et al. (US Patent No. 6,211,139), hereinafter "Keys".

Keys teaches a personal care formulation, such as hair or skin conditioners (see col. 11, lines 36-38), which comprises solvatrope or coupling agent in an amount of about 0.1 wt. % to about 65 wt. %; oil or hydrophobic organic component in an amount of about 0.1 wt. % to 65 wt. %, preferably about 0.1 wt. % to about 25 wt. %, and most preferably about 0.1 wt. % to about 5 wt. %; and the amount of water is about 20 to 99.7 wt. % of the formulation (see col. 6, line 57 to col. 7, line 5). For personal care applications, anionic surfactants may be used such as ammonium lauryl sulfate or sodium lauryl sulfate, among a few, as well as amphoteric or nonionic surfactants (see col. 28, lines 25-52). Conditioning agents are typically used in personal care formulations and examples are mineral oil, petrolatum, or vegetable oil (see col. 29, line 50 to col. 30, line 10). Perfumes or fragrance materials may be added to the compositions and the selection of the perfume or perfumes is based upon the application, the desired effect on the consumer, and preferences of the formulator (see

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col. 30, lines 52-57). Examples include amyl salicylate, γ -decalactone, α -ionone (4-(2,6,6-trimethyl-1-cyclohexenyl-1-yl)-3-buten-2-one), d-limonene/orange terpenes, musk indanone, p-hydroxyphenylbutanone, nonalactone, undecalactone and mixtures thereof (see col. 31, line 16 to col. 32, line 20), which should mask the acidic odor of the hair composition. The pH (10% solution) of the composition is generally adjusted to be in the range of from about 2 to about 7, preferably from about 2.4 to about 6.5, more preferably from about 2.6 to about 4, and adjustment of pH is normally carried out by including a small quantity of free acid like citric acid (see col. 37, line 59 to col. 38, line 3). Other optional ingredients include aloe and humectants like lactic acid (see col. 41, lines 53-55). In Example 29, Keys teaches a microemulsion hair conditioner formulation which comprises 1.0 wt% cetereareth-20 (nonionic surfactant), 1.8 wt% mineral oil, fragrance, dye, preservative, and other additives, and deionized water to 100 wt% (see col. 52, line 60 to col. 53, line 11). Keys, however, fails to specifically disclose a personal care formulation like hair conditioner comprising a fragrance composition which comprises at least one musk, hydrocarbons like limonene/terpenes, amyl salicylate, γ -decalactone, nonalactone, and undecalactone.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a composition comprising a fragrance which comprises at least one musk, hydrocarbons like limonene/terpenes, amyl salicylate, γ -decalactone, nonalactone, undecalactone because these are some of the selection of perfume ingredients suggested by Keys in col. 31, line 16 to col. 32, line 20, which provide the desired benefits to hair.

13. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keys as applied to the above claims, and further in view of Nakatsu.

Sherry teaches the features as described above. Sherry, however, fails to specifically disclose sulfur-containing compounds in the perfume composition.

It is known from Nakatsu, an analogous art (see claim 18), to add sulfur-containing compounds in perfume compositions to impart antimicrobial activity to the perfume composition (see abstract; col. 3, lines 29-32).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate sulfur-containing compounds into the perfume compositions of Keys because this would impart antimicrobial activity to the perfume compositions as taught by Nakatsu.

Response to Arguments

14. Applicants' arguments with respect to claims 2, 6-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796